LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JUL 6 1973
MICHAEL RODAK JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 73-78

MEL KAHN, etc.,
Appellants,

vs.

ROBERT L. SHEVIN, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

BILL HOPPE
Attorney for Appellants
Second Floor, Concord Building
Miami, Florida 33130

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

TABLE OF CONTENTS

Jurisdictional Statement 1
Opinion Below 1
Jurisdiction 2
Question Presented 2
Statutes Involved 2
Statement 2
The Questions Are Substantial 3
Certificate of Service 5
Appendix A—Memorandum Opinion and Final Judgment A1
Appendix B—Order A4
Appendix C—Notice of Appeal to Supreme Court of United States A8

Table of Authorities

CASES

Reed v. *Reed*, 404 U.S. 71 (1971) 3
Seidenburg v. *McSorley's Ale House*, 317 F. Supp. 593 (1973) 4

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitution of the United States—
Fourteenth Amendment 2, 3
Nineteenth Amendment 4
Section 196.191(7), Florida Statutes 2, 3, 4
28 U.S.C. Section 1257(2) 2

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. .....

MEL KAHN, etc.,
Appellants,

vs.

ROBERT L. SHEVIN, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

Appellants appeal from a Judgment of the Florida Supreme Court on February 7, 1973 which reversed the Memorandum Opinion and Final Judgment filed in the Circuit Court of the Eleventh Judicial Circuit of Dade County, Florida on April 21, 1972.

OPINION BELOW

The Opinion in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, is not reported. A copy of this Opinion is attached hereto as Appendix A. The Opinion of the Supreme Court of the State of Florida is reported in 273 So. 2d 72. A copy of this Opinion is attached hereto as Appendix B. The Notice of Appeal to this Court was filed on May 4, 1973, and is attached hereto as Appendix C.

JURISDICTION

Suit was brought under due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 U.S.C. Section 1257(2).

QUESTION PRESENTED

Whether the classification of widows separate from widowers for the purpose of granting to widows a tax exemption on property to the value of $500.00 constitutes invidious discrimination in violation of the equal protection and due process provisions of the Federal Constitution.

STATUTES INVOLVED

United States Constitution, Fourteenth Amendment

F.S. 196.191(7)

STATEMENT

A Complaint for Declaratory Relief was filed by Appellee, Mel Kahn, as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure against A. H. Blake, Dade County Tax Assessor, J. Ed Straughn, Director of the Florida Department of Revenue as public officers charged with the administration of property tax laws; the Appellant, the Attorney General of the State of Florida, participated in the proceedings in the trial under an Order granting his motion to intervene pursuant to Section 86.091 of the Florida Statutes. The Appellee has alleged denial of his application for a $500.00 property tax ex-

emption under §196.191(7) and asserted that as a widower he and others similarly situated were deprived of equal protection and due process by the terms and application of the Statute limiting the exemption to widows. Appellant contends that by allowing widows to receive such an exemption without allowing widowers to, is in violation of the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution and therefore Florida Statute 196.191(7) is invalid or is invalid as applied. The Circuit Court of the Eleventh Judicial Circuit in and for Dade County ruled in Appellant's favor and ordered:

> 1. That Florida Statute 196.191(7) applies to feminine gender, is therefore discriminatory and arbitrary and is unconstitutonal and in violation of the equal protection clause of the Constitution of the United States.
>
> 2. That the Court is aware that this matter is of great importance to public and tax assessors throughout the entire State and directs that the parties originate an Appeal in the Supreme Court of Florida forthwith.

On appeal to the Supreme Court of Florida, the Supreme Court reversed the judgment of the Circuit Court and held F.S. 196.191(7) to be constitutional.

THE QUESTIONS ARE SUBSTANTIAL

The issues involved in this Appeal are similar to those raised by *Reed* v. *Reed,* 404 U.S. 71 (1971). Both in Reed and in this case, there is no distinction made by the governing body other than that of sex. While Reed merely dealt with the procedure used for appointing an

Executor/Executrix, this case deals with the power of the State to tax purely on a discriminatory basis. As between men who own property and women who own property, there is no rational justification for separate treatment, yet the State of Florida has not allowed widowers to receive the same treatment as widows. The Supreme Court of the State of Florida has attempted to point out an economic disparity between men and women as a basis for their opinion. The basis of the Statute, however, is not men and women, but men and women who own property. They are all members of the same entitlement class and should be equally entitled to the $500.00 exemption in taxes.

Today a woman is fully emancipated; Amendment XIX, U.S. Constitution. Their ability to enter all aspects of community life is virtually complete. A man's loss at the death of his spouse is equal to that of a woman although the woman's loss may move us more. The test as to whether a sex based discrimination is allowed is whether there is a rational distinction; and sex based discrimination has been nullified when no persuasive difference between men and women could be offered to justify difference in treatment. *Seidenburg* v. *McSorley's Ale House,* 317 F. Supp. 593 (1973). Florida Statute 196.191(7)'s exemption has no rational relation to any economic, social or political distinction. Its continued effect is discriminatory under the United States Constitution and creates a substantial inequality between widows and widowers in the State of Florida.

Respectfully submitted,

BILL HOPPE
Counsel for Appellants
Second Floor, Concord Building
Miami, Florida 33130

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Jurisdictional Statement was this 29... day of June, 1973, placed in the United States mail, postage prepaid, to the Attorney General, Attorney for Appellees, The Capitol, Tallahassee, Florida.

BILL HOPPE

APPENDIX A

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

Case No. 71-20673

MEL KAHN, etc.,
Plaintiff,

vs.

J. ED STRAUGHN and A. H. BLAKE,
Defendants.

Memorandum Opinion and Final Judgment

THIS CAUSE having come on to be heard before me for final hearing and the Court having heard argument of counsel, and considered the memoranda submitted by counsel; now, finds;

That Florida Statute 196.191(7) allows a woman who has lost her spouse by death and has not remarried to claim a $500.00 exemption from taxes on property in this State.

That the Plaintiff, MEL KAHN, has lost his spouse by death and has not remarried but is denied the beneficial operation of this statute solely because he is a man.

That the courts of this State since the earliest days of statehood have used the word "widow" in a context which clearly denotes a woman who has lost her husband by death, *Wilson* v *Fridenburg*, 19 Fla. 461; *City of Jacksonville Beach* v *State*, 151 So2d 430; In re Beacher's Estate, 177 So2d 838, 3rd D.C.A. 1965; In re Estate of Yohn, 229 So2d 612, 1st D.C.A. 1969.

In a recent Florida Supreme Court opinion, the Court reversed a long line of cases which adhered to the common law, and now permits the wife to bring an action for loss of consortium and other services; heretofore only a husband could claim loss of consortium and services, the court recognized the inequity and struck down this unjust discrimination, *Gates* v *Foley*, Case No. 39,694 (1971) Supreme Court of Florida.

That the Legislature significantly took notice of the invidious discriminations and in their wisdom placed woman on an equal footing with man in respect to paying alimony and child support which historically had been reserved for men. Under the enactment of the "No Fault Divorce" law, the Courts may require a woman to pay her ex-husband alimony and support for the children, Florida Statute §61.08, Chapter 71-241 at 973 (1971).

Chief Justice Burger in a recent Supreme Court opinion, *Reed* v *Reed*, 30 L.Ed. 225, 92 S.Ct. ..... (November 22, 1971), employed the equal protection clause of the XIX Amendment as a shield against sexual discrimination on the basis of sex. This Court has made a clarion pronouncement that the 1868 Amendment will be relied upon to put laws involving sexual discrimination under the same tests as those related to racial discrimination. Justice Burger opined that mandatory preference to members of either sex over members of the other, "is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the 14th Amendment". The same Court in 1920 intoned that classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike", *Royster Guano Co.* v *Virginia*, 253 U.S. 412, 415, 64 L.Ed. 989, 990, 40 S.Ct. 560.

That full and complete emancipation of womanhood is withstanding any and all challenges based on sex differences alone, and the male opponents can anticipate that their generations of cherished "diggins" will be eroded to a point of total collapse.

The Florida Constitution, Article VII, Sec. 3 (6) 1968, exempts every *widow* from taxation in the amount of $500.00 without any reference to "widowers", and this Court is powerless to expand the meaning of "widow" to include both women and men, it is therefore,

ORDERED AND ADJUDGED

1. That Florida Statute Sec. 196.191 (7) applies to the feminine gender and is therefore discriminatory and arbitrary and is unconstitutional and in violation of the Equal Protection Clause of the Constitution of the United States and the Declaration of Rights, Article I, §2 of the Florida Constitution, and Florida Statute 196.191(7) is inoperative and is hereby stricken.

2. Further, the Court holds, based on the ore tenus motion of the County Attorney and Attorney General, that this Order is stayed pending an appeal.

3. That the Court is aware that this matter is of great importance to the public and tax assessors throughout the entire State and directs that the parties originate the appeal in the Supreme Court of Florida forthwith.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 21 day of April, 1972.

/s/ Thomas A. Testa
Circuit Court Judge

APPENDIX B

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1973

CASE NO. 42,371

ROBERT L. SHEVIN, et al.,
Appellants,

v.

MEL KAHN, etc.,
Appellee.

Opinion filed February 7, 1973

An Appeal from the Circuit Court in and for Dade County, Thomas A. Testa, Judge

Robert L. Shevin, Attorney General; Barry Scott Richard, Deputy Attorney General and Winifred L. Wentworth, Assistant Attorney General; for Appellant

Bill Hoppe, for Appellee

McCAIN, J.

Appellants appeal from a final judgment of the Circuit Court for Dade County, Florida, holding Fla. Stat. §196.191(7)[1] invalid as a violation of the equal protec-

---

1. The various statutes relating to ad valorem taxation and exemptions therefrom were extensively revised by Chapter 71-133, Laws of Florida, which took effect on December 31, 1971. Inter alia, Fla.Stat. §196.191(7) was repealed as such and its substance incorporated in §196.202, which provides:

> "Property of widows, blind persons, and persons totally and permanently disabled—Property to the value of five hundred dollars ($500) of every widow, blind person, or totally and permanently disabled person who is a bona fide resident of this state shall be exempt from taxation."

tion clause of the Fourteenth Amendment of the United States Constitution and Art. I, §2, Declaration of Rights, Florida Constitution, 1968. We have jurisdiction pursuant to Fla. Const. Article V, §4(2).

Appellee, Kahn, filed his complaint for declaratory relief as a class action pursuant to Rule 1.220, F.R.C.P., and Fla. Stat. §86.011, alleging denial of his application for a $500 tax exemption under Fla. Stat. §196.191(7), and asserting that as a widower he and others similarly situated were deprived of equal protection and due process by the limitation of the exemption to "widows".

In his final judgment, the trial judge held:

> "The Florida Constitution, Article VII, Sec. 3(6) 1968, exempts every widow from taxation in the amount of $500.00 without any reference to 'widowers', [sic] and this Court is powerless to expand the meaning of 'widow' to include both women and men, it is therefore,
>
> "ORDERED AND ADJUDGED
>
> "1. That Florida Statute Sec. 196.191(7) applies to the feminine gender and is therefore discriminatory and arbitrary and is unconstitutional and in violation of the Equal Protection Clause of the Constitution of the United States and the Declaration of Rights, Article I, §2 of the Florida Constitution, and Florida Statute 196.191(7) is inoperative and is hereby stricken."

We agree that the term "widow" may not be judicially redefined to include a man who has lost his wife since the legislative intent obviously limits the application of the term only to a woman who has lost her husband by death. This definition is in conformance with

the unvarying legislative and judicial use of the term in other areas.[2]

Appellee stresses that inclusion or exclusion from classification under this statute is determined by the sex of the individual involved. While this fact is of significance, it is not enough to declare the statute unconstitutional as a violation of equal protection of the law. Both the Florida and federal courts have upheld classifications determined by sex in other areas.[3]

All that is required to uphold the classification of widow or widower contained in the statute in question is that it be shown that it "rests upon some ground of difference having a fair and substantial relation to the object of the legislation."[4] We cannot agree with the assertion that the classification of "widow" is not one which rests upon such a ground of difference.

It has been ably pointed out that the object of the legislation here in question is "to reduce to a limited extent the tax burden on widows who own property to the value of $500 and . . . thereby to 'reduce the disparity between the economic . . . capabilities of a man and a woman,' . . ." As recognized in Gruenwald v. Gardner,

---

2. See City of Jacksonville Beach v. State, 151 So. 2d 430 (Fla. 1963); Wilson v. Fridenburg, 19 Fla. 461 (1882); In re Estate of Yohn, 229 So. 2d 612 (Fla. App. 1st, 1969); In re Beacher's Estate, 177 So. 2d 838 (Fla. App. 3rd, 1965).

3. In Hoyt v. Florida, 368 U.S. 57 (1961), the United States Supreme Court unanimously affirmed the decision of this Court, Hoyt v. Florida 119 So. 2d 691 (Fla. 1959), upholding a classification determined by sex for the purpose of according a privileged status to women in jury registration. In Gruenwald v. Gardner, 390 F.2d 591 (2d Cir. 1968), the United States Court of Appeals upheld the constitutionality of certain provisions of the Social Security Act which accorded women more favorable treatment than men in computing social security benefits.

4. Reed v. Reed, 404 U.S. 71, 76 (1971).

supra, women workers as a class do not earn as much as men.[5] Certainly this has a "fair and substantial relation" to the ability of women property owners to pay taxes on property of even minimal value.

We recognize that steps have been and are continuing to be taken toward the elimination of legal barriers to equality of the sexes. Among the significant steps toward this end is the legislative provision for alimony and child support payments by women as well as men.[6] This provision, however, provides a means of taking into consideration the factual economic capability of each woman involved through judicial supervision and control.

Significantly, the provisions of the statute under review do not provide any means for similar consideration. Therefore, until the steps taken toward legal equality result in equality in fact, a finding of identity between the sexes at this time would rest on fiction and not fact.

Accordingly, it is our judgment that Fla. Stat. §196.191(7) is a valid legislative enactment. Therefore, the final judgment of the Circuit Court must be and is hereby reversed.

It is so ordered.

CARLTON, C.J., ROBERTS, ERVIN, BOYD and DEKLE, JJ. and WILLIAMS, Circuit Judge, Concur.

---

5. It is estimated that in 1970 the median annual earnings of all male workers with taxable earnings was $6,133 while only $2,734 for women. U.S. Dept. of H.E.W., Social Security Bull., Annual Statistical Supp., 1970, Table 34 at 50.

6. Fla. Stat. §61.08 (1972).

APPENDIX C

IN THE SUPREME COURT OF FLORIDA

CASE NO. 42,371

ROBERT L. SHEVIN, et al.,
Appellants,

vs.

MEL KAHN, etc.,
Appellee.

Notice of Appeal to the Supreme Court of the U. S.

Notice is hereby given that MEL KAHN, etc., the appellee above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Florida, reversing the decision entered in this action by the Circuit Court in and for Dade County on April 21, 1972, said reversal and opinion being filed by the Supreme Court of Florida on February 7, 1973.

This appeal is taken pursuant to 28 U.S.C. §1257(1).

/s/ Bill Hoppe
Attorney for Appellee
ACLU of Florida
66 West Flagler Street
Miami, Florida 33130

I certify that a copy hereof was furnished to Barry Scott Richard, Office of the Attorney General. The Capitol, Tallahassee, Florida, 32304 and to Murray A. Greenberg, Assistant County Attorney, 1626 Dade County Courthouse, Miami, Florida, 33130, by mail this 4th day of May, 1973.

/s/ Bill Hoppe
Attorney